

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE COMPANY,
Plaintiff,

vs.

DORMITORY AUTHORITY - STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants.

DORMITORY AUTHORITY OF THE STATE OF NEW
YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE COMPANY;
BARTEC INDUSTRIES INC.; DAYTON SUPERIOR
SPECIALTY CHEMICAL CORP. a/k/a DAYTON
SUPERIOR CORPORATION; SPECIALTY
CONSTRUCTION BRANDS, INC. t/a TEC; KEMPER
CASUALTY INSURANCE COMPANY d/b/a KEMPER
INSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA.;
UNITED STATES FIRE INSURANCE COMPANY;
ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.
f/k/a COMMERCIAL UNDERWRITERS INSURANCE
COMPANY; ZURICH AMERICAN INSURANCE
COMPANY d/b/a ZURICH INSURANCE COMPANY;
OHIO CASUALTY INSURANCE COMPANY d/b/a OHIO
CASUALTY GROUP; HARLEYSVILLE MUTUAL
INSURANCE COMPANY (a/k/a HARLEYSVILLE
INSURANCE COMPANY,); JOHN DOES 1-20 and XYZ
CORPS. 1-12,

Fourth-Party Defendants.

Case No. 07-CV-6915 (DLC)
ECF CASE

**TRATAROS
CONSTRUCTION, INC.'S
ANSWER TO
COUNTERCLAIM OF
DAYTON SUPERIOR
SPECIALTY CHEMICAL
CORP. a/k/a DAYTON
SUPERIOR CORPORATION**

Third-Party Defendant/Fourth-Party Plaintiff, Trataros Construction, Inc. ("Trataros"), by and through their attorneys, Dreifuss Bonacci & Parker, LLP, as and for its Answer to the Counterclaim of Fourth-Party Defendant, Dayton Superior Chemical Corp. a/k/a Dayton Superior Corporation ("Dayton Superior") alleges as follows:

1. The allegations contained in the unnumbered paragraph entitled "Counterclaim Against Trataros Construction, Inc." (hereinafter, the "Counterclaim") are denied.

WHEREFORE, Trataros demands judgment against Dayton Superior for the following relief:

- a. dismissal of the Counterclaim with prejudice;
- b. award of attorneys fees, costs and disbursements; and
- c. such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Dayton Superior's Counterclaim fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Dayton Superior lacks standing to pursue claims against Trataros.

THIRD AFFIRMATIVE DEFENSE

The Counterclaim is barred by the provisions of the appropriate statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the equitable doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred due to the absence of privity of contract between Dayton Superior and Trataros.

EIGHTH AFFIRMATIVE DEFENSE

Any damages allegedly sustained by Dayton Superior were and/or will be caused in whole or in part by the culpable conduct of Dayton Superior, as a result of which Dayton Superior's Counterclaim is barred or diminished in the proportion that such culpable conduct has caused and/or will cause their alleged damages.

NINTH AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, as a result of Dayton Superior's breach(es) of warranties, express and/or implied, covering its products utilized on and/or incorporated into the Baruch College, Site B project.

TENTH AFFIRMATIVE DEFENSE

In the event Dayton Superior has sustained and/or will sustain damages as alleged in its Counterclaim, then such damages were/will be sustained as a result of the conduct of persons and/or entities other than Trataros, and for whose conduct Trataros was not responsible.

ELEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of mitigation of damages.

TWELFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of avoidable consequence.

THIRTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred as it may not properly be interposed in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred under the doctrine of release.

FIFTEENTH AFFIRMATIVE DEFENSE

The Counterclaims is barred by documentary evidence.

SIXTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, as a result of Dayton Superior's breach(es) of the terms of its contract(s) with fourth-party defendant, Bartec Industries, Inc. ("Bartec"), to which contract(s) Trataros is and/or will be subrogated.

SEVENTEENTH AFFIRMATIVE DEFENSE

Trataros reserves the right to rely upon any and all additional defenses available to Travelers, and all Defendants, third-party defendants, fourth-party defendants, and other parties to the above-captioned matter, and any and all defenses asserted by Trataros and/or Travelers against claims or counter-claims asserted by any party to this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

Trataros reserves the right to rely upon any and all additional defenses which may be disclosed during discovery in the within action.

Dated: Florham Park, New Jersey
January 11, 2008

DREIFUSS BONACCI & PARKER, LLP

By: _____ /S/
Eli J. Rogers (ER:6564)

*Attorneys for Trataros Construction, Inc.
One Penn Plaza, 36th Floor
New York, New York 10119*

-and-

26 Columbia Turnpike
North Entrance
Florham Park, New Jersey 07932
(973) 514-1414

Please respond to New Jersey office

TO: see attached Service List

1:07-cv-06915-DLC Travelers Casualty and Surety Company v. Dormitory Authority State of New York et al
Denise L. Cote, presiding
Date filed: 08/01/2007
Date of last filing: 01/11/2008

Attorneys

David Abramovitz

Zeynel Karcio glu, Esq
36 East 20th Street
New York, NY 10003
(212) 661-0722
212-682-6861 (fax)
dabramovitz@zdlaw.com
Assigned: 10/01/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

representing

Kohn Pedersen Fox Associates, P.C.
(Defendant)

Joanne M. Bonacci

Dreifuss, Bonacci & Parker, LLP
26 Columbia Turnpike, North Entrance
Florham Park, NJ 07932
(973)-514-1414
(973)-514-5959 (fax)
jbonacci@dbplawfirm.com
Assigned: 08/10/2007
ATTORNEY TO BE NOTICED

representing

Travelers Casualty and Surety Company
(Counter Defendant)

Travelers Casualty and Surety Company
(Counter Defendant)

Travelers

**Casualty and
Surety
Company**
*(Cross
Claimant)*

**Travelers
Casualty and
Surety
Company**
(Plaintiff)

Joseph DeDonato

Morgan,Melhuish,Monaghan,Arviidson,Abrutyn&Lisowski

39 Broadway-35flr
New York, NY 10006
(212) 735-8600
(212)-509-3422 (fax)
jdedonato@morganlawfirm.com

Assigned: 12/07/2007

ATTORNEY TO BE NOTICED

representing

**Ohio Casualty
Insurance
Company**
*(Fourth Party
Defendant)*

**Ohio Casualty
Insurance
Company**
*(Counter
Claimant)*

**Ohio Casualty
Insurance
Company**
*(Cross
Claimant)*

Louis J. Dennis

Zetlin & De Chiara LLP
801 Second Avenue
New York, NY 10017
(212) 682-6800
(212) 682-6861 (fax)

Assigned: 10/31/2007

representing

**Kohn Pedersen
Fox Associates,
P.C.**
(Defendant)

David Craig Dreifuss

Dreifuss Bonacci & Parker, LLP
One Penn Plaza
36th Fl
New York, NY 10119
973-514-1414
973-514-5959 (fax)
DDreifuss@dbplawfirm.com
Assigned: 08/01/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

representing

**Travelers
Casualty and
Surety
Company
(Counter
Defendant)**

Timothy B Froessel
Holland & Knight LLP(FLA)
50 North Laura Street, Suite 3900
Jacksonville, FL 32202
(212) 513-3484
(212) 385-9010 (fax)
tbfroess@hklaw.com
Assigned: 09/28/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

representing

**Dormitory
Authority State
of New York
(ThirdParty
Plaintiff)**

**Dormitory
Authority State
of New York
(Cross**

**Dormitory
Authority State
of New York
(Counter
Claimant)**

Claimant)

**Dormitory
Authority State
of New York**
(Defendant)

**TDX
Construction
Corp.**
*(ThirdParty
Plaintiff)*

**TDX
Construction
Corp.**
*(Counter
Defendant)*

**TDX
Construction
Corp.**
*(Cross
Defendant)*

**TDX
Construction
Corp.**
(Defendant)

Diana Elaine Goldberg
Mound Cotton Wollan & Greengrass (NYC)
One Battery Park Plaza
New York, NY 10004
212-804-4221
212-344-8066 (fax)
dgoldberg@moundcotton.com
Assigned: 01/11/2008
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

representing

**Allied World
Assurance
Company (U.S.)
Inc.**
*(FourthParty
Defendant)*

William Gordon Kelly
Goldberg Segalla LLP (NJ)

Dayton

301 Carnegie Center
Princeton, NJ 08540
(914) 798-5400
(914) 798-5401 (fax)
wkelly@goldbergsegalla.com
Assigned: 11/30/2007
LEAD ATTORNEY

representing

**Superior
Specialty
Chemical Corp.**

*(Fourth Party
Defendant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Counter
Claimant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Cross
Claimant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Cross
Defendant)*

Eli John Rogers
Dreifuss Bonacci & Parker, LLP
26 Columbia Turnpike, North Entrance
Florham Park, NJ 07932
(973)-514-1414
(973)-514-5959 (fax)
erogers@dbplawfirm.com
Assigned: 10/26/2007
ATTORNEY TO BE NOTICED

representing

**Travelers
Casualty and
Surety
Company**
*(Counter
Defendant)*

**Travelers
Casualty and
Surety**

Company
*(Cross
Claimant)*

**Trataros
Construction,
Inc.**
*(ThirdParty
Defendant)*

**Trataros
Construction,
Inc.**
*(Counter
Claimant)*

**Trataros
Construction,
Inc.**
*(Counter
Defendant)*

**Trataros
Construction,
Inc.**
*(Cross
Claimant)*

Vincent J. Zichello

Zinker & Herzberg, LLP
278 East Main Street, Suite C, Po Box 866
Smithtown, NY 11787
212-972-5560
212-972-5569 (fax)
zimc@msn.com
Assigned: 12/14/2007
ATTORNEY TO BE NOTICED

representing

**Carolina
Casualty
Insurance
Company**
*(FourthParty
Defendant)*

**Carolina
Casualty
Insurance
Company**
*(Counter
Claimant)*

**Carolina
Casualty
Insurance
Company
(Cross
Claimant)**

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